89-1367

No.

Supreme Court, U.S.
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In The
Supreme Court of The United States
October Term, 1989

In Re:

LILLIAN CAPODAGLI, Administratrix of the Estate of David P. Capodagli, Deceased,

Petitioner,

v.

ROBERT D. WILSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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51 p

QUESTION PRESENTED

WHETHER A MUNICIPAL POLICE CHIEF'S FAILURE TO PROVIDE NEEDED MEDICAL ATTENTION, INCLUDING RECOGNITION OF SUICIDE POTENTIAL AND TIMELY MEDICAL INTERVENTION, FOR A PRETRIAL DETAINEE WHO HUNG HIMSELF IN A JAIL CELL DENIED THE DETAINEE HIS RIGHT TO MEDICAL ATTENTION GUARANTEED BY THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION. IN PARTICULAR:

I.

WHETHER THIS CASE IMPLICATES THE DUE PROCESS OBLIGATION OF THE POLICE TO PRETRIAL DETAINEES OR OTHER PERSONS IN THEIR CARE WHO REQUIRE MEDICAL ATTENTION, TO OBTAIN SUCH MEDICAL ATTENTION, A QUESTION RESERVED IN CITY OF REVERE V. MASSACHUSETTS GENERAL HOSPITAL, 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

II.

WHETHER THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF THIS COURT, AND OF FEDERAL DISTRICT AND CIRCUIT COURTS, WHICH HAVE UPHELD THE DUE PROCESS RIGHTS OF INMATES AND PRETRIAL DETAINEES WHO ARE POTENTIALLY SUICIDAL, TO BE PROTECTED FROM THEMSELVES AND TO BE PROVIDED REQUISITE MEDICAL ATTENTION.

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II. THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF THIS COURT, AND OF FEDERAL DISTRICT AND CIRCUIT COURTS, WHICH HAVE UPHELD THE DUE PROCESS RIGHTS OF INMATES AND PRETRIAL DETAINEES WHO ARE POTENTIALLY SUICIDAL, TO BE PROTECTED FROM THEMSELVES AND TO BE PROVIDED REQUISITE MEDICAL ATTENTION 22

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No.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

In re:

LILLIAN CAPODAGLI, Administratrix of the Estate of David P. Capodagli, Deceased,

Petitioner,

v.

ROBERT D. WILSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PRAYER

The petitioner, Lillian R. Capodagli, Administratrix of the Estate of David P. Capodagli, Deceased, respectfully prays that a Writ of Certiorari issue to review the judgment and order entered by the

Illinois Appellate Court on March 10, 1989, and the order of the Illinois Supreme Court denying leave to appeal, entered June 1, 1989, Docket No. 68445.

OPINION BELOW

The opinion of the Illinois Appellate Court in Capodagli v. Wilson, 180 Ill.App.3d 456, 536 N.E.2d 135 (1989) is attached hereto and appears as Appendix A. The Illinois Supreme Court denied a timely filed petition for leave to appeal on June 1, 1989, Docket No. 68445, which is also attached hereto and appears as Appendix B.

STATEMENT OF JURISDICTION

The jurisdiction of this Honorable Court is invoked under 28 U.S.C. §1257(3) and this Petition for Writ of Certiorari has been filed within the time permitted by law, under 28 U.S.C. §2101(c), within ninety days of the decision of the Illinois Supreme Court on June 1, 1989, denying leave to appeal from the decision

of the Appellate Court, and rendering the Appellate Court decision final as of June 1, 1989.

CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV, §1 of the United States Constitution provides:

> §1. Citizenship rights not to be abridged by states.
>
> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person or life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISION INVOLVED

Title 42, §1983, United States Code, states:

> §1983. Civil action for deprivation of civil rights.
>
> Every person, who under color of any statute, ordinance, regulation, custom or usage,

> of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

On July 5, 1980, David Capodagli, 19 years old, then intoxicated and under the influence of drugs, was taken into custody by Markham Police and placed, alone, in an individual cell at 12:30 a.m. for approximately one hour without observation; he was then found hanging from the bars of the cell by his T-shirt (T 670, T146-150, 152).

Plaintiff then brought this action based on 42 U.S.C. §1983 and the due

process clause of the 14th Amendment of the United States Constitution, alleging that the official policies of Defendant, Robert D. Wilson, Chief of Police of the City of Markham, caused David's death and denied him his right to life without due process of law under the 14th Amendment of the United States Constitution. (Petition for Leave to Appeal, Page 9.) Defendant admitted and the jury was instructed that Chief Wilson was solely responsible for formulating the official policy of the City of Markham pertaining to the booking and detention of prisoners (C 461). Plaintiff presented circumstantial and expert testimony that David was denied his 14th Amendment right to life guaranteed by the due process clause by policies which Chief Wilson, in his official capacity had in force, which denied David needed medical attention, by permitting prisoners known to be intoxicated to be placed in a

jail cell without first undergoing a medical examination, permitting intoxicated prisoners to be detained in an individual jail cell without being visually observed at periodic intervals, and an overall deficient procedure for booking and detaining prisoners.

The jury found for Plaintiff and assessed damages of $375,000 (C 485-486). The Trial Court entered judgment for Defendant, stating the verdict was against the manifest weight of the evidence (C 601). Plaintiff appealed to the Illinois Appellate Court, which found Defendant's failure to have David medically examined despite his obvious intoxication and the officers' violation of procedures to check the cells every half hour did not constitute a deliberate disregard for his well-being and that Defendant's knowledge that David was behaving violently was no reason to know or suspect that his

violence might become self-directed. Capodagli v. Wilson, 180 Ill.App.3d 456, 536 N.E.2d 135 (1989).

Petitioner sought leave to appeal to the Illinois Supreme Court, contending (1) the Appellate Court's complete failure to address a claim properly presented as Point I of Plaintiff's Brief concerning the Trial Court's failure to employ the correct legal standard denied Petitioner her right to due process and equal protection, which guarantees her constitutional right to appeal, and (2) the Appellate Court incorrectly decided the substantive issue, without apparently considering the substantial contrary authority. (Petition for Leave to Appeal, Pages 3-6). The Illinois Supreme Court denied leave to appeal on June 1, 1989.

REASONS FOR GRANTING THE WRIT

I. THIS CASE IMPLICATES THE DUE PROCESS OBLIGATION OF THE POLICE TO PRETRIAL DETAINEES OR OTHER PERSONS IN THEIR CARE WHO REQUIRE MEDICAL ATTENTION, TO OBTAIN SUCH MEDICAL ATTENTION, A QUESTION RESERVED IN CITY OF REVERE V. MASSACHUSETTS GENERAL HOSPITAL, 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983).

City of Revere v. Massachusetts General Hospital, 463 U.S. 239, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983), involved the possible application of the 8th Amendment and the 14th Amendment to municipal responsibility for prisoners in need of medical attention. This Court again affirmed the statement in Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976), that the 8th Amendment's prescription against cruel and unusual punishment is violated by "deliberate indifference to serious medical needs of prisoners." (463 U.S. 239, 243-244.) Because the state does not acquire the power to punish (with which

the 8th Amendment is concerned) until after a formal adjudication of guilt and there had been no formal adjudication of guilt against the Petitioner in Revere at the time he required medical care, the 8th Amendment did not apply, but, the Court said, the due Process Clause does require a governmental agency to provide medical care to persons injured while being apprehended by police; in fact, the Court said that the due process rights of a pretrial detainee are at least as great as those provided by the 8th Amendment to a convicted prisoner, then said:

> We need not define, in this case, Revere's due process obligation to pretrial detainees or to other persons in its care who require medical attention. (463 U.S. 239, 244.)

In this case, the jury heard evidence that David required medical care, that he did not receive medical attention, and that this failure was a proximate cause of

his death by suicide. Unfortunately, the opinion below is nearly totally devoid of any of the medical evidence. Consequently petitioner shall summarize such evidence.

At approximately 12:45 a.m., Markham police placed David in a jail cell knowing he was intoxicated. David was found hanging from a cell bar approximately four feet from the floor at 1:44 a.m. David was not observed during this time. Defendant admitted he was acting under color of state and municipal law, that he was the official policy maker of the City of Markham pertaining to booking and detention of prisoners.

Medical evidence, at autopsy, indicated David was intoxicated and that methaqualone was found in his blood. The medical examiner explained that alcohol and methaqualone can both act as sedatives so an individual could become combative or experience mood swings. The toxicologist

explained, too, that ingesting alcohol and methaqualone would produce a sedative effect and mood swings would be very common. (Transcript, 273-274, 281-282, T 125). There was no evidence presented of any training of the municipal officials responsible for the custody of prisoners receiving any training regarding suicide detection or prevention (Transcript, 348, 369.)

Petitioner presented evidence that David who was using alcohol and drugs was suicidal while he was in municipal custody, that he needed medical attention of some type, but this was not recognized and, consequently, David did not receive the required medical attention.

Whether the police could or should have recognized or in fact did recognize that David was suicidal and should have provided medical attention was an issue that was illuminated in this case by

expert testimony. Joseph R. Rowan, Executive Director and Chairman of the Board of Juvenile and Criminal Justice International, a private, non-profit survey consultation agency, and holder of a masters degree in correctional administration from the University of Notre Dame, defined correctional administration as the study of how detention and correctional institutions should be operated and what are the good standards and practices (T 185-186). (The opinion below does not even mention his testimony.)

Among other professionally related activities, he was selected to be on the Suicide Task Force for the United States Department of Justice, to develop a national program, training and guidelines, and standards for the handling of potentially suicidal persons in jails and lockups (T 188-189). Among 223 monographs

he had written was one entitled, "Almost All Suicides In Jails and Lockups Can Be Prevented If ..." (T 191). He had a series of jobs in the field of corrections including working at a local jail in Minnesota in 1941, being Deputy Commissioner of Corrections for the State of Minnesota and Director of the John Howard Association in Chicago (T 193-196). He has been in the field for a total of 45 years (T 210).

Mr. Rowan, who had been provided with depositions and other information, testified that in his opinion, Chief Wilson's 1975 directive for the officers to check on the arrestees in the lockup every thirty minutes existed, but the police officers did not know about it; so, it was grossly deficient from the standpoint of implementation and practice (T 215-216). A 1979 memorandum concerning the black binder where departmental

memorandums and directives would be collected, set up a process that was not working because officers did not know about the 1975 directive which was supposed to be in the black binder (T 217-218). There was no policy on medical screening prior to placing persons who, at the time of arrest, were inebriated or using drugs, into the lockup, contrary to the American Medical Association, American Correctional Association and National Sheriffs' Association standards (T 218).

The National Sheriffs' Association Jail Officers Training Manual, Rowan explained, says that jail booking officers should conduct a basic medical screening of all inmates and consult a physician if the inmate shows signs of a medical disorder or serious alcoholism (T 220). The receiving screening standard of the American Association provides (T 220):

> Current illness and health problems, including dental

problems, venereal diseases, and other infections, medications taken, and special health requirement, use of alcohol and other drugs which include types of drugs used, mode of use, amounts of use, frequency used, date or time of last use, and the history of problems which may have occurred after ceasing. In other words, convulsions or going into delirium.

Mr. Rowan went on to discuss the American Medical Association standard for health services in jail receiving and screening which provides (T 220-221):

> Written policy and defined procedures require receiving screening to be performed by health trained or qualified health care personnel on all inmates including transfers upon arrival at the facility with the findings recorded on a printed screening form approved by the health authority.
>
> Inquiry into current illness and health problems including venereal diseases, medications taken, and special health requirements, use of alcohol and other drugs which includes types of drugs used, mode of use, amounts used, frequency used, date or time of last use, and a history of problems which may have occurred after

ceasing use. For example, convulsions . . .

These standards, Rowan concluded, support constant supervision for persons who are placed in a lockup under these conditions; thus, the National Sheriffs' Association says: "All inmates who are intoxicated when admitted must be observed constantly" (T 223). But in Markham there was no policy requiring constant supervision - no policy at all; the officers did not even know about the 1975 policy (T 224). The 1977 Illinois standards requiring a 30 minute check were applicable here (T 224). Mr. Rowan emphasized that the 1977 Illinois Municipal Jail and Lockup Standards (T 225) provide:

> For the protection of city officials, suspected inebriates should be examined by a physician before confinement to determine intoxication or illness. An undetected skull fracture, diabetic coma, epilepsy, or some other disease or illness

often produce behavior resembling drunkenness.

The standard issued by the Commission on Accreditation for Law Enforcement Agencies provides (T 226):

> A written directive prescribed methods for handling and detaining persons under the influence of alcohol or narcotics who are violent or self-destructive. Commentary: "The holding facility (-- and that is police lockup generally --)* is not normally equipped to handle appropriate treatment to intoxicated or drug addicted arrestees, and such persons would be detained in other facilities when available. When these facilities are not available, special consideration should be given to ensure that the potential for arrestees to injure themselves or others is minimized. Arrestees should be under observation at all times. (* These words in parentheses are those of the witness who was reading the standard to the jury.)

No such policy existed in Markham (T 227). There was no policy spelling out what particular persons should be providing the supervision (T 228). Rowan

told the jury that the AMA standard provides (T 232-233):

> Written policy and defined procedures exist regarding the provision of adequate number of health trained correctional officers as follows: Inmates are within sight/sound of at least one health trained correctional officer at all times and minimally one health trained officer per shift is trained in basic cardiopulmonary resuscitation, C.P.R., and recognition to symptoms of illness most common to the inmates.

Rowan further testified that American Correctional Association standard 2-5271 provides:

> A training program is established for the responsible health authority in cooperation with the facility administrator and provides instruction in the following areas: Administration of first aid and cardiopulmonary resuscitation if emergency treatment is not provided within four minutes, in certain situations lives can be lost.

Similar standards have been said to incorporate the principles set forth in Estelle v. Gamble. (Matzker v. Herr, 748 F.2d 1142 (7th Cir. 1984.) Mr. Rowan concluded that there was no policy and procedure in existence in Markham pertaining to suicide detection and prevention, and he outlined what such a policy would have provided (T 233-234). In addition, there was no audio or visual monitoring, which should supplement not replace human supervision (T 235). Constant supervision, he testified, shouldn't be a goal, it should exist (T 239), and it was realistic, from an economic standpoint to have constant supervision in a lockup the size of Markham in 1980 (T 240). When he was asked if his opinion about Defendant's policies would be the same if this were a single incident of hanging, he responded: "No, those policies should exist if

nothing like this ever happened" (T 253). In 1980, suicide prevention and detection training was available (T 254).

In City of Canton, Ohio v. Harris, _____ U.S. _____, _____ L.Ed.2d _____, 109 S.Ct. 1197, 1204 (1989), under somewhat similar factual circumstances, the Court held that the inadequacy of police training may serve as the basis for §1983 liability where, and only where, the failure to train amounts to deliberate indifference to the rights of persons with whom the police must come in contact. The Court there again observed that it has never determined what degree of culpability must be shown before the particular constitutional deprivation of a denial of the due process right to medical care while in detention, is established, and that the Court, in Revere, had reserved decision on the question of whether something less than the 8th

Amendment's deliberate indifference test may be applicable in claims by detainees asserting violations of their due process rights to medical care while in custody. (109 S.Ct. 1197, 1204, n. 8).

Unlike the situation in Canton, in which the court was required to assume that the inmate's constitutional right to receive medical care was denied by city employees, the Appellate Court here found the failure to have David medically examined despite his obvious intoxication did not constitute a deliberate disregard for David's well-being. That reasoning directly implicates the nature and scope of David's due process right to medical care while a pretrial detainee in the custody of the Markham police. This is consequently an appropriate case to determine the issue reserved in Revere, the scope of the due process obligation to

obtain medical care for pretrial detainees in its care.

II. THE DECISION BELOW IS IN CONFLICT WITH DECISIONS OF THIS COURT, AND OF FEDERAL DISTRICT AND CIRCUIT COURTS, WHICH HAVE UPHELD THE DUE PROCESS RIGHTS OF INMATES AND PRETRIAL DETAINEES WHO ARE POTENTIALLY SUICIDAL, TO BE PROTECTED FROM THEMSELVES AND TO BE PROVIDED REQUISITE MEDICAL ATTENTION.

In Estelle v. Gamble, 429 U.S. 97, 104, 97 S.Ct. 285, 50 L.Ed.2d 251, this Court held that prison authorities have a duty under the 8th Amendment to provide needed medical care for inmates and that deliberate indifference to serious medical needs of prisoners violates the Constitution. The Illinois Appellate Court here relied on two decisions of the Federal courts, State Bank of St. Charles v. Camic, 712 F.2d 1140, (7th Cir. 1983) and Williams v. City of Lancaster, 639 F.Supp. 377, (E.D. Pa. 1986). The Williams court found failure to order a medical exam was not deliberate

indifference and that there was no duty to install an elaborate suicide prevention system. St. Charles and Williams did at least implicitly recognize a §1983 cause of action for suicide of a pretrial detainee. The decisions were based on the facts which the court found showed only negligence.

With respect to the medical needs of individuals, this Court has squarely held that pretrial detainees, not as yet convicted of any crime, such as David in this case, are entitled to greater protection than convicted persons under the 8th Amendment. (Bell v. Wolfish, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 447 (1979).) In City of Canton, Ohio v. Harris, this Court upheld the imposition of §1983 liability upon a municipality due to the inadequacy of police training where it amounts to deliberate indifference to the constitutional rights of persons with

whom the police come in contact. In that case, Canton police had failed to obtain medical help for a prisoner who was subsequently diagnosed as suffering from a severe emotional ailment, albeit one different from that involved in this case. The female inmate in that case claimed that she needed medical help and that the police officers were not provided with any special training to make a determination as to when to summon medical care for an injured detainee.

Paralleling some of the evidence introduced in this case is Partridge v. Two Unknown Police Officers, 751 F.2d 1448, 1452, (5th Cir. 1985), where plaintiff alleged suicide is a known risk at detention centers, defendants knew or should have known that Partridge was suicidal and defendants' policies and procedures inadequately protected detainees from the risk of suicide. In

rejecting the argument that the duty of which this Court spoke in Estelle v. Gamble did not extend to instances of deliberate self-injury, the Court stated:

> There is no sound underlying distinction between the right to medical care for physical ills and for psychological or psychiatric afflictions. . . . Treatment of mentally disturbed inmates is a "serious medical need" under Estelle. . . . The "deliberate indifference" standard of Estelle is therefore equally applicable to assessing the constitutional adequacy of treating psychological or psychiatric ailments at a prison.
>
> Suicidal tendencies evidence a psychological or psychiatric condition that could be as serious as or more serious than any physical pathology or injury. And just as a failure to act to save a prisoner suffering from gangrene might constitute deliberate indifference, . . . failure to take any steps to save a suicidal prisoner from injuring himself may also constitute deliberate indifference to a serious medical need.

Other cases indicating that suicides who are denied proper medical attention may be entitled to recover under §1983 include the following: Strandell v. Jackson County, Illinois, 634 F.Supp. 824 (So. Dist. Ill. 1986); Guglielmoni v. Alexander, 583 F.Supp. 821, 827 (D. Conn. 1984); Jackson v. City of Chicago, 645 F.Supp. 926 (N.D. Ill. 1986); Mader v. City of Chicago, 85 C 7914, unpublished opinion of Magistrate Bucklo, to the same effect; Miga v. City of Holyoke, 398 Mass. 343, 497 N.E.2d 1 (1986); Jones v. County of DuPage, 87 C 9841, memorandum opinion of the United States District Court for the Northern District of Illinois, Eastern Division, filed December 12, 1988, rejecting a motion to dismiss where Plaintiff's decedent was placed in a cell, unattended, obviously intoxicated, not examined by any medical authority or observed periodically and who eventually

harmed himself; Matje v. Leis, 571 F.Supp. 918, 930 (S.D. Oh. 1983); Madden v. City of Meriden, 602 F.Supp. 1160, 1164 (D. Conn. 1985); Holland v. Breen, 523 F.Supp. 284, 288-290 (D. Mass. 1985).

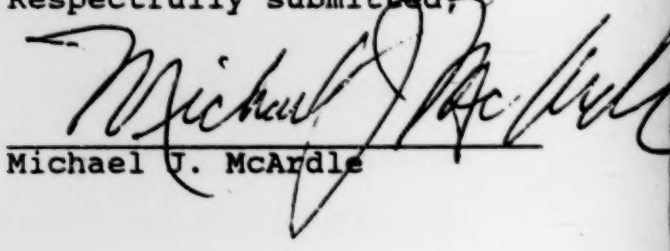
It is submitted that the overwhelming authority holds that the due process obligations of the authorities to those in their custody does extend to the medical needs of those who are potentially suicidal and that failure to act to train the responsible agents to recognize potential suicide as a legitimate and serious medical need and provide medical assistance may constitute deliberate indifference and a violation of §1983. At any rate, there is a division of authority on this issue between the Illinois Appellate Court in this case and the Federal courts, which is ripe for resolution by this Court. We suggest that the instant case is an excellent vehicle

for examination and, if necessary, clarification of the law in this area.

CONCLUSION

For the reasons states, the Petitioner respectfully prays that this Honorable Court issue a Writ of Certiorari to review the judgment of the Illinois Appellate Court.

Respectfully submitted,



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APPENDICES

APPENDIX A

FIFTH DIVISION
MARCH 10, 1989

86-2491

LILLIAN R. CAPODAGLI, Administratrix of the Estate of David P. Capodagli,

Plaintiff-Appellant,

v.

ROBERT D. WILSON, Chief of Police of the City of Markham,

Defendant-Appellee.

Appeal from the Circuit Court of Cook County

Honorable Charles J. Durham,
Judge Presiding.

JUSTICE PINCHAM delivered the opinion of the court:

The plaintiff, Lillian R. Capodagli, Administratrix of the Estate of David Capodagli, appeals from the trial court's judgment, notwithstanding the verdict in favor of defendant, Robert D. Wilson's (sic) Chief of Police of the City of Markham. We affirm. Our reasons follow.

On July 5, 1980, 19 year old David Capodagli (David), while under the influence of alcohol and methaqualone, was arrested by City of Markham Police for outstanding warrants. He was placed, alone, in a city of Markham jail cell. One hour later, David was found hanging in the cell by his tank top t-shirt. He had committed suicide.

Plaintiff filed the instant complaint under the 1983 Civil Rights Act (42 U.S.C. par. 1983) as the Administratrix of the Estate of David Capodagli. In the complaint, plaintiff alleged that David was denied his right under the Fourteenth Amendment to the Constitution of the United States not to be deprived of his life without due process of law. Plaintiff's complaint alleged that the policies of the defendant, in his official capacity as the City of Markham Police Chief, which permitted (1) prisoners known

to be intoxicated to be placed in a jail cell without first undergoing a medical examination to ascertain their well being, (2) intoxicated prisoners to be detained in a jail cell without being visually observed at periodic intervals, were inherently deficient procedures for detaining prisoners.

Following trial, the jury returned a verdict in favor of plaintiff and awarded plaintiff $375,000 in damages. However, the trial court entered a judgment notwithstanding the jury's verdict in favor of defendant.

On this appeal, plaintiff maintains that she is entitled to a reversal of the judgment in favor of defendant and that she is entitled to a re-entry of the judgment because the trial court did not apply the correct legal standards governing entry of a judgment notwithstanding the verdict. Conversely,

the defendant maintains that the trial court used the correct standards for entry of a judgment notwithstanding the verdict, as set forth in section 2-1202 of the Illinois Code of Civil Procedure. (Ill.Rev.Stat. 1987, ch. 110, par. 2-1202.) It is there provided that:

"***Relief after trial may include the entry of judgment if under the evidence in the case it would have been the duty of the Court to direct a verdict without submitting the case to the jury."

The standard governing review of a trial court's decision to enter judgment notwithstanding the verdict is announced in Pedrick v. Peoria & Eastern R.R. Co. (1967), 37 Ill.2d 494. In Pedrick the court stated that judgment notwithstanding the verdict may be entered "only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant

that no contrary verdict based on that evidence could ever stand." (37 Ill.2d 494, 510.) Such is the instant case. The issue at trial in the case at bar was whether David was denied his Fourteenth Amendment constitutional right not to be deprived of his life without due process by policies which the defendant, in his official capacity, enacted and had in force.

Local governing bodies and local officials in their official capacity may be sued under 42 U.S.C. section 1983 for monetary damage, declaratory judgment, and injunctive relief where the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted or promulgated by those whose edicts or acts may fairly be said to represent official policy. Monell v. New York City

Dept. of Social Services (1978), 436 U.S. 658, 56 L.Ed.2d 611, 98 S.Ct. 2018.

Section 1983 (42 U.S.C. par. 1983) provides that every "person" who, under color of any statute, ordinance, regulation, custom, or usage of any State subjects, or "causes to be subjected," any person to the deprivation of any federally protected rights, privileges, or immunities shall be civilly liable to the injured party. In an action brought under section 1983, "the initial inquiry must focus on whether the two essential elements to a section 1983 action are present: (1) whether the conduct complained of was committed by a person acting under color of state law; and (2) whether this conduct deprived a person of rights, privileges, or immunities secured by the Constitution or laws of the United States." Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377, 380; State

Bank of St. Charles v. Camic (1983) 712 F.2d 1140; Parratt v. Taylor (1981), 451 U.S. 527, 535, 68 L.Ed.2d 420, 101 S.Ct. 1908, 1913.

In the instant case there is no question that the defendant acted under color of state law. The trial court found, however, that plaintiff failed to demonstrate that any policy instituted by defendant violated David's Fourteenth Amendment right not to be deprived of his life without due process. We agree.

In State Bank of St. Charles v. Camic (1983), 712 F.2d 1140, plaintiff sued on behalf of the estate of a jailed prisoner, who committed suicide while imprisoned in the city jail. The prisoner was intoxicated and violently resisted arrest and booking, which prompted one officer to note that the prisoner was acting in a "freaky" manner. About an hour later, the prisoner was found fatally hanged by his

shirt in his cell. The Police Department Regulations required hourly cell checks. The district court granted defendant's motion for summary judgment on the grounds that failing to prevent detainee's suicide did not constitute a constitutional deprivation. Plaintiff appealed. On appeal, the court held that defendants were entitled to summary judgment under section 1983 where it was undisputed that defendants had no knowledge of or any reason to suspect that the prisoner had suicidal tendencies. The court further reasoned that "Knowing that [defendant] was behaving violently or was acting in a 'freaky' manner is not synonymous with having reason to know that the violence might become self-directed." The court further held that, "Even had the defendants disregarded one or more of their established procedures, such as checking the cells every hour or

effectively monitoring by visual or auditory systems the activities of prisoners incarcerated *** the actions of the defendants do not constitute deliberate disregard for the possibility that [detainee] would take his own life."

In Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377, the plaintiff brought, against the defendant, a civil right and wrongful death action in which plaintiff sought to recover damages for the death of a prisoner who, while intoxicated, hung himself in his cell while incarcerated in the city jail. State regulations required a cell check every half hour. The check was routinely skipped between 5 and 6 a.m., when the on-duty officer left the station to feed the police horses. In granting defendant's motion for summary judgment the district court held that Williams failed to demonstrate any infringement of

constitutional rights sufficient to state a claim under the civil rights statute. The court reasoned that the officer's failure to follow the 30 minute cell check requirement was negligence at best and did not demonstrate a "total indifference to [detainee's] safety." The court further reasoned that even if it was police department custom to regularly miss the 5:30 check, "plaintiff has failed to show how that hour-long gap is anything more than mere negligence. A brief departure from the jail regulations does not automatically impinge upon prisoners' constitutional rights."

Applying Pedrick to the case at bar, the evidence when viewed most favorable to plaintiff, overwhelmingly favored the defendant and the trial court was correct in entering judgment notwithstanding the verdict. There was no evidence that the defendant had any knowledge of or any

reason to suspect suicidal tendencies by David. Although the evidence at trial established that David was violent, intoxicated, and disorderly, defendant's knowledge that he was behaving violently was no reason to know or suspect that his violence might become self-directed. State Bank of St. Charles v. Camic (1983), 712 F.2d 1140.

The officers' failure to have David medically examined, despite his obvious intoxication, and the officers violation of the established procedures to check the cells every half hour, did not constitute a deliberate disregard for David's well-being or safety. Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377.

Plaintiff, additionally argues that defendant should have installed a valid surveillance system for observation in the jail cells to prevent a suicide attempt. We disagree. The City of Markham police

department was under no such duty. Williams v. City of Lancaster, P.A. (1986), 639 F.Supp. 377.

We affirm the trial court's judgment notwithstanding the verdict.

AFFIRMED.

MURRAY, P.J., and COCCIA, J., CONCUR.

APPENDIX B

ILLINOIS SUPREME COURT
JULEANN HORNYAK, CLERK
Supreme Court Building
Springfield, IL 62706
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June 1, 1989

Mr. Corey E. Meyer
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No. 68445 - Lillian R. Capodagli, Admrx., etc., petitioner, v. Robert D. Wilson, etc., respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on June 23, 1989.

89-367

No.

Supreme Court, U.S.
FILED
SEP 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The
Supreme Court of the United States
October Term, 1989

In Re:
LILLIAN CAPODAGLI, Administratrix of the Estate of David P. Capodagli, Deceased,

Petitioner,

vs.

ROBERT D. WILSON,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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QUESTION PRESENTED

Does heavy intoxication of a pre-trial detainee signal a medical need or a potential suicide risk and must a police supervisor so train the personnel in a municipal detention center?

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No.

In The
Supreme Court of the United States
October Term, 1989

In Re:
LILLIAN CAPODAGLI, Administratrix of the Estate of David P. Capodagli, Deceased,

Petitioner,

vs.

ROBERT D. WILSON,

Respondent.

ANSWER TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

PRAYER

Respondent prays that the Supreme Court deny the petition for writ of certiorari in that the trial and appellate courts applied the applicable constitutional guidelines to the facts on the record and no new constitutional issue is raised.

Respondent agrees with the assertions as to the "Opinion Below", "Jurisdiction" and the "Constitutional Provision Involved".

Respondent agrees that Title 42, Section 1983 is applicable, but points out that Section 1983 creates no new rights and only permits the enforcement of existing constitutional rights. Petitioner has expanded its arguments beyond the cited Fourteenth Amendment and Respondent argues that all issues in this case should be limited to the Fourteenth Amendment cited.

ADDITIONAL STATEMENT OF THE CASE

The actual time during which the pre-trial detainee was unchecked was 54 minutes (T. 225, 802). State law had been changed prior to the incident to require one hour cell checks rather than half hour cell checks. (T. 225, 802).

Petitioner states that the State Appellate Court failed to address the Petitioner's claim that the Trial Court failed to employ the correct State legal standards in entering a directed verdict. This is alleged to deny Petitioner's right of appeal. In fact, the State Appellate Court addressed that issue and cited the State standard set out clearly in the Illinois Code of Civil Procedure and addressed and applied the Illinois case that had been cited by Petitioner (PP. 31-33, 38, Appendix A).

Petitioner states that the State Appellate Court "incorrectly" decided the substantive issue "without apparently considering the substantial contrary authority". In fact, the State Appellate Court cites the standard of "deliberate disregard for David's well being or safety" (P. 39, Appendix A). All of the cases cited by Petitioner were, in fact, cited to the State Appellate Court or could have been except for the *City of Canton, Ohio v. Harris* case which was not then available due to its recent vintage, but the standard set forth in that case was no different than the "deliberate indifferences" standard which was in fact applied to Chief of Police Wilson (Respondent herein) in his supervisory capacity.

REASONS FOR DENYING THE WRIT

I. THIS CASE DOES NOT CONFLICT WITH *CITY OF REVERE V. MASSACHUSETTS GENERAL HOSPITAL*, 463 U.S. 239, 244, 103 S.Ct. 2979, 77 L.Ed.2d 605 (1983). THE APPELLATE COURT IN ITS REVIEW RECOGNIZED THE CONSTITUTIONAL REQUIREMENT TO PROVIDE REQUIRED MEDICAL ATTENTION TO DETAINEES AND RULED THAT THE FACTS OF THIS CASE INVOLVING HEAVY INTOXICATION DID NOT SIGNAL A MEDICAL NEED.

City of Revere, supra, clearly states that a municipality owes a constitutional duty to render medical assistance to detainees who have been injured.

The Appellate Court in this case (*Cagodagli*) clearly recognized that principle, but did not find facts on the record which would support a finding against police chief Wilson (P.P. 38-30, Appendix A). A review by the United States Supreme Court would only be a review of the manner in which the Trial and Appellate courts applied this principle. No unexplored facet of constitutional law would be spotlighted before this Court.

II. THIS CASE WOULD NOT BE AFFECTED BY *CITY OF CANTON OHIO V. HARRIS*, ___ U.S. ___, ___ L.Ed. 2d ___, 109 S.Ct. 1197, 1204 (1989) WHICH DEALT WITH CONSTITUTIONAL LIABILITY FOR POLICY IMPLEMENTATION BY POLICE SUPERVISORS. RESPONDENT POLICE CHIEF WILSON WAS NOT SHIELDED FROM LIABILITY BY SUPERVISORY THEORIES. THE LOWER COURTS RULED IN HIS FAVOR BASED UPON THE FACTS OF THE DETENTION.

In *City of Canton, Ohio, supra,* the issue was raised as to liability against supervisors for failure to train. In the *Capodagli* case, the police chief was not supported in the denial of liability by the State trial judge and the State Appellate Court because

he was a supervisor (P. 35, Appendix A). The facts simply did not support liability under the applicable constitutional principles (P. 35, Appendix A).

III. THERE IS NO CONSTITUTIONAL MANDATE REQUIRING POLICE SUPERVISORS TO PROVIDE SUICIDE PREVENTION TRAINING TO MUNICIPAL DETENTION FACILITIES PERSONNEL.

In *Danese v. Asman,* 875 F.2d 1239, 1245 (6th Cir. 1989), the Court of Appeals held that police supervisors enjoyed qualified immunity from liability after a municipal lock-up detainee committed suicide. The Sixth Circuit Court ruled that there is no U.S. Constitutional mandate requiring a police supervisor to provide suicide procedures and training.

IV. A SUPERVISOR OF A MUNICIPAL DETENTION CENTER MAY BE HELD LIABLE FOR POLICIES OR LACK OF TRAINING WHICH SHOWS A DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS OF PRISONERS. SINCE THE APPELLATE COURT CONSIDERED THIS PRINCIPLE IN ITS REVIEW OF THE FACTS OF THIS CASE, NO NEW CONSTITUTIONAL ISSUE IS PRESENT TO BRING ABOUT A UNITED STATES SUPREME COURT REVIEW OF THIS CASE.

Petitioner cites many cases, and Respondent does not disagree with the principle that the constitution mandates that pre-trial detainees should not be treated with deliberate indifference to their serious medical needs.

Petitioner cited a Fourth Amendment case which is not applicable.

In *Jones v. County of DuPage,* 87 C 9841, Judge Duff denied a motion to dismiss charges similar to those in the *Capodagli* case, but the denial was based upon the Fourth Amendment rights of the detainee. The Fourteenth Amendment claim was dismissed.

A reading of the opinion in Appendix A will clearly demonstrate that the constitutional principle of deliberate indifference was considered as the Appellate Court reviewed the facts of the *Capodagli* case.

V. NO POLICY OR CUSTOM INSTITUTED BY POLICE CHIEF WILSON CAUSED A VIOLATION OF DECENDENT'S CONSTITUTIONAL RIGHTS.

A. The Governing Law

1. To prevail under Section 1983, Petitioner must demonstrate that a policy or custom insutituted by Police Chief Wilson, as executed, violated Capodagli's Constitutional rights.

2. Petitioner asserts a violation of substantive due process under the Fourteenth Amendment, consisting of deprivation of life without due process.

3. To demonstrate a deprivaiton of liberty without due process, the conditions of pretrial detention must amount "to punishment of the detainee." *Bell v. Wolfish,* 441, U.S. 520, 535 (1979). Wideranging deference is to be accorded to local jail administrators in the adoption and execution of detention policies. *Id.* at 547. Where, as here, an intent to punish has not been shown, any condition which is an incident of legitimate nonpunitive governmental objective will withstand challenge under the Fourteenth Amendment, even if it appears to constitute punishment on its face. *Id.* at 538-39 and n. 20.

4. The Fourteenth Amendment rights of pretrial detainees are analogized to the Eighth Amendment rights of prisoners. *Roberts v. City of Troy,* 773 F.2d 720, 723 (6th Cir. 1985): *see State Bank of St. Charles v. Camic,* 712 F.2d 1140, 1146 (7th Cir.), *cert. denied,* 464 U.S. 995 (1983).

5. Neither the Supreme Court nor the Seventh Circuit has recognized a constitutional right to be protected from suicide. *See State Bank of St. Charles,* 712 F.2d at 1145 n. 3. Under the Eighth Amendment, Respondent's policies or customs "must reveal deliberate or reckless indifference to the prisoner's safety" in order to justify relief under Section 1983. *Estelle v. Gamble,* 429 U.S. 97, 104 (1976); *see State Bank of St. Charles,* 712 F.2d at 1146. Section 1983 does not confer a cause of action for negligent deprivations of liberty resulting from bodily injuries sustained in jail. *Daniels v. Williams,* ___ U.S. ___, 106 S.Ct. 662, 663, 665-7 (1986); *see Davidson v. Cannon,* ___ U.S. ___, 106 S.Ct. 668, 670 (1986).

6. In order for Petitioner to prevail, the Constitution had to require something that Chief Wilson did not do. As the following discussion demonstrates, no case so holds.

B. The Failure to Check the Cell-Block Every Half-Hour Did Not Give Rise to Relief Under Section 1983.

1. Respondent Had No Consittutional Obligation to Guarantee 30-Minute or One Hour Checks.

   a. There is no record evidence that Capodagli embarked on suicide in the first half hour of his confinement, and thus that a check at that point would have prevented his death.

   b. In *State Bank of St. Charles v. Camic,* 712 F.2d 1140 (7th Cir.), *cert. denied,* 464 U.S. 995 (1983), an obviously intoxicated man was put under arrest, as in this case. As here, the decedent violently resisted arrest and booking, causing one officer to note that he was acting in a 'freaky' manner. Before he was put in a cell, his belt and shoelaces were removed. Just under an hour later, the prisoner was found hanging by his shirt in his cell. He had been dead thirty

minutes. Police Department regulations required hourly cell checks and instructed that every person "should be considered as a potential suicide victim." Plaintiffs appealed Summary Judgment for Defendants.

Held:

(1) Defendants were entitled to Summary Judgment under Section 1983 where it was undisputed that they had no knowledge of or any reason to suspect suicidal tendencies. "knowing that he was behaving violently or was acting in a 'freaky' manner is not synonymous with having reason to know that the violence might become self-directed." *Id.* at 1146.

(2) In the current case, even had Respondent disregarded established procedures such as half-hour or hourly cell checks, that is insufficient, as a matter of law, to demonstrate deliberate disregard for the possibility that the decedent would kill himself. *Id.; accord, Christian v. Owens,* 461 F.Supp. 72, 77 (W.D. Va. 1978) (negligent oversight, during pat-down search, of pistol hidden in boot, no basis for Section 1983 action arising from inmate's suicide 50 minutes after lock-up; Summary Judgment entered for Defendants).

a. *Williams v. City of Lancaster,* 639 F. Supp. 377 (E.D. Pa. 1986), is also closely analogous. The police in that case arrested decedent, who was visibly intoxicated. Before being escorted to his jail cell, the decedent told his brother that he was "ok", did not appear angry or upset, and did not complain of medical problems. State regulations required a cell check every half-hour. The check was routinely skipped between 5:00 and 6:00 a.m., when the on-duty officer instead left the station to feed the police horses. After he returned, he scanned the cell-block shortly

before 6:00 a.m., and found the decedent hanging in his cell. Defendants moved for and received Summary Judgment.

Held:

(1) The failure to follow the 30-minute cell check rule was negligence at best and did not demonstrate a "total indifference to decedent's safety." *Id.* at 384.

(2) Even if it was police department custom to regularly miss the 5:30 check, "Plaintiff has failed to show how that hour-long gap is anything more than mere negligence. A brief departure from the jail regulations does not automatically impinge upon prisoners' Constitutional rights." *Id.*

2. Even Assuming That Illinois Law Required Checks Every Thirty Minutes, the Due Process Clause In No Way *Mandated Adherence To Such a Rule.*

a. The prior Illinois standards recommending cell checks every half-hour, like the National Sheriffs Association Standards, were simply advisory guidelines and did not dictate compliance.

b. Even if they had had binding force, however, that fact would not elevate the rule to Constitutional stature. "The argument that the procedures established by the regulations can themselves be considered a liberty interest is analytically defensible . . . " *Shango v. Jurich,* 681 F.2d 1091, 1100-01 (7th Cir. 1982); *see Carson v. Block,* 790 F.2d 562, 565-66 (7th Cir.), *cert. denied,* ___ U.S. ___, 107 S.Ct. 669 (1986).

c. In the specific context of jail suicides, the Courts have rejected the notion that the failure to follow rules requiring periodic observations amounts to a Constitutional violation for purposes of

Section 1983. *See State Bank of St. Charles,* 712 F.2d at 1146; *Wright v. Wagner,* 641 F.2d 239, 241-42 (5th Cir. Unit A March 30, 1981); *Williams,* 639 F. Supp. at 384.

3. If the Thirty-Minute Cell Check Policy Instituted by Chief Wilson Was Still in Place When Capodagli Died, the City Cannot be Held Liable for Others' Disregard *of the Rule.*

In an official capacity suit, a municipality cannot be held liable unless Plaintiff proves an "affirmative link" between the occurrence of various incidents of police misconduct and the policy adopted by Defendant. *Rizzo v. Goode,* 423 U.S. 362, 371 (1976).

C. Inadequate Training Programs Do Not Offend Due Process

Last Term, the Supreme Court granted certiorari in *City of Springfield v. Kibbe,* No. 85-1217, 54 U.S.L.W. 3598 (cert. granted March 11, 1986) to consider whether inadequate police training constitutes a basis for municipal liability under Section 1983. In *City of Oklahoma City v. Tuttle,* 471 U.S. 808, 105 S.Ct. 2427, 2436 (1985), a four-member plurality cast doubt on such liability: "[T]he word 'policy' generally implies a course of action consciously chosen from various alternatives . . ." and therefore one cannot be said to pursue a policy of inadequate training absent "proof that policymakers deliberately chose a training program which would prove inadequate." As a matter of law, the police chief's failure to institute a suicide prevention program or CPR training does not rise to the conscious choice among alternatives required to impose liability under Section 1983.

1. Lack of Suicide Prevention Program.

Neither Capodagli's behavior nor a prior history of suicides at the Markham jail created a strong likelihood of suicide, and therefore the absence of a suicide prevention program in no way offended due process. *Estate of Cartwright v. City of Concord,* 618 F. Supp. 722, 727-28, (N.D. Cal. 1985) (lack of preventive care did not create liability for jail

suicide); *Wright v. Wagner,* 641 F.2d at 241-42 n. 2 (failure to place suicide victim, who previously tried to strangle himself, in a padded cell not actionable where Defendants had no reason to suspect insanity); *see Estate of Davis v. Johnson,* 745 F.2d 1066, 1071 (7th Cir. 1984) (Section 1983 judgment against police clerk reversed); *State Bank of St. Charles,* 712 F.2d at 1146 (affirming Summary Judgment for Section 1983 Defendants where jail personnel had no reason to suspect suicidal tendencies).

2. Lack of CPR Training.

a. The record evidence is undisputed that Capodagli was dead when he was found, depriving Petitioner of the requisite causal link between any deficiency in CPR training and his death. *Estate of Cartwright,* 618 F. Supp. at 730 n. 5.

b. In *Estate of Cartwright,* the failure to administer CPR did not amount to a Constitutional violation as a matter of law where officers immediately cut the suicide victim down, called the ambulance and checked for vital signs. 618 F. Supp. at 729-30.

D. The Due Process Clause Does Not Mandate the Medical Screening of Inebriates or the Mentally Ill.

1. Disregard of police department regulations that barred jailing detainees displaying a mental disorder at best indicates negligence, not callous indifference. *Estate of Davis,* 745 F.2d at 1071 n. 1.

2. Although state regulations in *Williams v. City of Lancaster* called for medical exams of all "suspected inebriates", the failure to have a physician examine an obviously intoxicated detainee could not "be deemed more than mere negligence" where he was conscious; did not complain of or exhibit mental or physical stress; did not ask for a doctor;

and told his brother he was "ok". 639 F. Supp. at 383 (granting Summary Judgment in Section 1983 suit to Defendants).

3. Once again, nothing in Capodagli's behavior gave rise to a perceived need for medical screening. *State Bank of St. Charles,* 712 F.2d 1145 (Affirming Summary Judgment for Section 1983 Defendants).

E. No Constitutional Deficiency Arose From the Absence (If Any) of Video or Audio Surveillance.

1. The record supports a finding of audio monitoring. Even assuming it does not, however, the failure to invest in audio or video Survellance equipment either did not amount to a conscious policy, *Tuttle,* 471 U.S. at ___, 105 S.Ct. at 2436 (plurality opinion), or represented a legitimate nonpunitive allocation of resources, *see Bell v. Wolfish,* 441 U.S. at 538-39 and n. 20.

2. There is no Constitutional duty to install a video jail surveillance system, *State Bank of St. Charles,* 712 F.2d at 1146, even in the face of multiple suicides, *Williams,* 639 F. Supp. at 384. The opposite result would be tantamount to imposing strict liability for all jail suicides absent video monitoring systems. *Williams. Id.*

F. There Is No Record Evidence That Any of the Complained-of Deficiencies Caused Capodagli's Death.

1. In order to sustain an award under Section 1983, Plaintiff must demonstrate that the complained-of policies, as executed, were "the moving force of the Constitutional violation". *Monnell,* 436 U.S. at ___, 105 S.Ct. at 2436-37 and n. 8 (plurality opinion); *Polk County v. Dodson,* 454 U.S. 312, 326 (1981).

2. Furthermore, Plaintiff must "establish that the unconstitutional act was taken *pursuant to* a municipal policy rather than simply resulting from

such a policy in a 'but for' sense". *Pembaur v. City of Cincinnati,* ___ U.S. ___, 106 S.Ct. 1292, 1299-1300 n. 11 (plurality opinion) (emphasis in original); *City of Oklahoma City,* 471 U.S. at ___, 105 S.Ct. at 2441 n. 9 (Brennan, J., concurring). The Supreme Court recently accepted certiorari in *City of St. Louis v. Praprotnik,* No. 86-772, 55 U.S.L.W. 3472 (*cert. granted* Jan. 13, 1987) to explore the principles of causation in Section 1983 suits applicable to local governments.

3. Simply put, Plaintiff's arguments consist of nothing more than that her son might not have died *but for* the failure to follow certain beneficial practices: half-hour cell checks, medical screening, suicide prevention training, CPR techniques, and video and audio surveillance. Even assuming the Constitution required such practices (a conclusion we dispute), the fact that they were not employed was inadequate here, under *Pembaur* and *City of Oklahoma City,* to support a verdict since any deficiency did not cause Capodagli to kill himself.

   "[I]t is open to question whether a policymaker's 'gross negligence' in establishing police training practices could establish a 'policy' that constitutes a 'moving force' behind subsequent unconstitutional conduct, or whether a more conscious decision on the part of the policymaker would be required." *City of Oklahoma City,* 471 U.S. at ___, 105 S.Ct. at 2436 n. 7.

G. None of the Cases On Which Petitioner Relies Justifies Relief.

1. *Partridge v. Two Unknown Police Officers,* 791 F.2d 1182 (5th Cir. 1986) (cited at Appellant's Brief p. 38) is distinguishable on two grounds:

   a. There, unlike her, the police knew the prisoner had suffered a nervous breakdown and was a mental patient. *Id.* at 1184; *compare State Bank*

of St. Charles, 712 F.2d at 1146.

b. That case involved a Motion to Dismiss the pleading and simply allowed Plaintiff, under liberal pleading standards, to attempt to prove his case. Here, by contrast, Plaintiff has tried and failed to prove her case. *See Estate of Cartwright,* 618 F. Supp. at 727 n. 4.

2. *Jackson v. City of Chicago,* No. 85 C 7913, slip op. (N.D. Ill. Oct. 24, 1986) (cited at Appellant's Brief p. 29) and *Mader v. City of Chicago,* No. 86 C 7914, slip op. (N.D. Ill. Oct. 30, 1986) (same) are distinguishable as cases in which alleged police beatings contributed to and should have put Defendants on notice of the risk of suicide. Those cases also were decided in the posture of a Motion to Dismiss rather than on the basis of evidence adduced at trial.

VI. THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION IS NOT A FONT OF TORT LAW TO BE SUPERIMPOSED ON STATE TORT REMEDIES.

Petitioner pleaded and proved conduct which if negligent, did not rise to the level of a Constitutional Tort. Failure to prove more than negligence gave the Trial Court the basis to grant a new trial or to grant a judgment for Respondent notwithstanding the verdict of the jury.

The Due Process Clause is not a font or tort law to be superimposed on State tort remedies. *Daniels v. Williams,* 106 S.Ct. 662, 666 (1986); *Parratt v. Taylor,* 451 U.S. 527, 544 (1983); *Paul v. Davis,* 424 U.S. 693, 701 (1976).

The actions of the police were not shown to be grossly negligent as to arise to the level of "deliberate indifference" required to from the basis of a Constitutional Tort.

See, e.g., Fiacco v. City of Rensselaer, N.Y., 783 F.2d 319, 326 (2d Cir. 1986) (holding that the City may be held liable under Section 1983 for nonsupervision of police officers "on the basis

of a policy of deliberate indifference to the Constitutional rights of persons within its domain."); *Voutour v. Vitale*, 761 F.2d 812, 820 (1st Cir. 1985) ("Like most other court have addressed the matter, we hold that the supervisor must demonstrate at least gross negligence amounting to deliberate indifference, and that this conduct must be causally linked to the subordinate's violation of Plaintiff's civil rights."), *cert. denied*, 106 S.Ct. 979 (1986); *Languirand v. Hayden*, 717 F.2d 220, 227 (5th Cir. 1983) ("failure to train must constitute gross negligence amounting to conscious indifference"), *cert. denied*, 467 U.S. 1215 (1984); *Owens v. Haas*, 601 F.2d 1242, 1247 (2d Cir.) ("the failure to train or supervise law enforcement officers must be so grossly negligent as to constitute 'deliberate indifference' in order to hold the county liable"), *cert. denied*, 444 U.S. 980 (1979). *Cf. Marchese v. Lucas*, 758 F.2d 181, 187-88 (6th Cir. 1985) (affirming finding of liability of county because of official toleration of, if not complicity in, assault on prisoner, as well as concealment of events and subsequent failure to investigate), petition for cert. pending sub nom. *County of Wayne v. Marchese*, No. 85-359; *Grandstaff v. City of Borger, Texas*, 767 F.2d 161, 169 (5th Cir. 1985) (recognizing that for a City to be liable under Section 1983 "[t]here must be (1) a policy (2) of the City's policymaker (3) that caused (4) the Plaintiff to be subjected to a deprivation of a Constitutional right"; and ultimately affirming City liability where City policymaker knew or should have known City's police officers were likely to shoot to kill without justification and without restraint); *Wellington v. Daniels*, 717 F.2d 932, 936 (4th Cir. 1983) ("A number of courts have interpreted *Monell* to hold that a municipal policy of authorizing or condoning police misconduct can be inferred where the municipality has been grossly negligent in the supervision and training of its police force."); *Hays v. Jefferson County*, 668 F.2d 869, 874 (6th Cir.) (municipal liability arises only where the Plaintiff has shown a complete failure to train or training is so reckless or grossly negligent that future police misconduct is almost inevitable), *cert. denied*, 459 U.S. 833 (1982); *Herrera v. Valentine*, 653 F.2d 1220, 1224 (8th Cir. 1981) (municipality may be held liable under Section 1983 for its failure to train police officers or its grossly negligent training); *Leite v. City of Providence*, 463 F. Supp. 585, 591 (D.R.I. 1978) ("training

must be nonexistent or reckless, or grossly, palpably, and culpably negligent").

VII. STATE AND PROFESSIONAL STANDARDS DO NOT IMPOSE BINDING LEGAL OBLIGATIONS MUCH LESS MIRROR CONSTITUTIONAL REQUIREMENTS.

Petitioner presented an expert witness, Joseph R. Rowan. Mr. Rowan has spent his professional career helping to improve conditions in United States jails (T. 185-86). Mr. Rowan witnessed many improvements over the years (T. 237). In 1982, Mr. Rowan's organization presented a seminar on suicide detection in the Chicago area and attracted about 550 attendees (T. 237). He has served on commissions and has helped draw-up standards to serve as "goals" (T. 238). Standards of the National Sherriff's Association and of the American Medical Association referred to by Mr. Rowan have been adopted as law by "eight or nine states" (T. 238). The information supplied by Mr. Rowan and cited in Petitioner's Brief is informative and helpful to anyone seeking improvement in jail conditions; however, Mr. Rowan admitted that the law in Illinois does not require suicide detection training or medical examination and constant observation of all intoxicated persons (T. 238) nor CPR training and the standards presented have not been passed as law in Illinois (T. 238).

In referring to the Illinois Standards passed in 1977 and changed in July, 1980, the month of the jail suicide in this case, Mr. Rowan referred to the fact that "inebriates" should be examined by a physician before confinement (T. 225). Mr. Rowan's stressed reading of that standard would have easily been overcome by the Trial Court's judicial notice that all persons suspected of intoxication in Illinois (e.g. driving under the influence arrests) are not given medical examination before being detained in municipal lock-ups.

Edward Holba, ruled as qualified to give expert opinions (C 799), testified that the American Medical Association and National Sheriff's Standards are not binding and have not been implemented in the south suburbs, at least (C 801). Mr. Holba reviewed the July, 1980 standards of the Illinois Department of

Corrections (C 802) and testified that those provisions likewise are minimum standards to be followed (C 802). Mr. Holba testified that, in his opinion, Markham did, in fact, meet those State standards (C 803). Mr. Holba testified that Markham, as well as other suburbs, had a policy that in some circumstances a highly intoxicated person would be taken for a medical examination (C 804-5). He testified it would be impractical to take all intoxicated people for a medical examination (C 805). He stated that, "The Oak Forest Police Department alone generated 50 to 60 DUI arrests per month and it would be almost impossible to take a person in for a two to three hour type of test to find out how badly they are under the influence" (C 805). Mr. Holba listened to much of the trial testimony and reviewed the other depositions (C 800). He testified that the handling of the decedent was done in a normal and customary way (C 806-7). Suicide detection training was not requried nor available in any of the suburban police departments (C 808). CPR is taught in the Police Academy but is not mandatory nor required by law for a policeman (C 808).

The standards set forth by Petitioner are interesting and should be implement by society. Those standards, however, are not binding and are not Constitutional requirements.

Those standards were admitted into evidence over the objection of Repondent but there was a negligence count pending when they were admitted and they would have been admissible for purposes of the negligence count. When the matter was submitted to the jury, there was no negligence count pending as that count was concluded by Summary Judgment. It was an error for the Trial Court to permit Instruction No. 18 (C 470) and Instruction No. 17 (C 469) which permitted Mr. Rowan's materials to be viewed by the jury.

If relief is granted to Petitioner, then Respondent should be granted a new trial.

CONCLUSION

The Trial and Appellate Courts were aware of the applicable constitutional principles in this case. The facts on the record do not support liability and no unexplored constitutional point is present to support granting a writ of certiorari.

Respectfully submitted,

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